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## REVIEWS OF BOOKS

### GENERAL BOOKS AND BOOKS OF ANCIENT HISTORY

*Law: Its Origin, Growth and Function.* Being a Course of Lectures Prepared for Delivery before the Law School of Harvard University. By JAMES COOLIDGE CARTER, LL.D., of the New York Bar. (New York and London: G. P. Putnam's Sons. 1907. Pp. vii, 355.)

WHEN Mr. Carter died in 1905, he had undoubtedly for many years been generally regarded as the leader of the American Bar. Although he was never a politician, he was more than a mere lawyer, and took a prominent part in many of the great civic movements of the day. Among these he became intensely interested in the efforts made during a series of years to bring about the adoption in New York of the code of substantive law, drafted by David Dudley Field. Being convinced not merely that the particular code was defective in form and substance, but also that any attempt at general codification was not only unwise, but futile, he threw himself into the opposition with all the force and ardor of a man of his great strength and abiding convictions. In the course of this opposition, he was led to think and read widely on the nature, origin and function of law, and to form very definite and positive opinions, which found expression at various times, before and after the Field Code had been defeated, in a number of pamphlets and addresses. Among these was a series entitled, *The Proposed Codification of our Common Law*; an address before the Virginia State Bar Association, upon *The Provinces of the Written and Unwritten Law*; and later, a memorable address before the American Bar Association upon *The Ideal and the Actual in the Law*.

Upon his retirement from active practice, he determined to write and publish a more complete expression of his views, but at the suggestion of President Eliot he was led to put them into the form of a series of lectures to be delivered before the Law School of Harvard University. The first draft of these lectures had barely been completed, when Mr. Carter was overtaken by the sudden illness from which he died, and these unrevised and undelivered lectures constitute the book before us. The lectures, as would be anticipated from the proposed occasion, are general in their nature and couched in non-technical language. They make no contribution to legal history. Mr. Carter adopts, for his purposes, the views and conclusions generally held by others.

These lectures make no such attempt to determine the province of jurisprudence, as was the purpose of the painful and laborious logic of John Austin. They contain no such searching analysis of legal ideas as is to be found in the classical treatise of Professor Holland. Their force is spent upon the general theorem, that "the whole private law, which governs much the larger part of human conduct, has arisen from and still stands upon custom, and is the necessary product of the life of society, and therefore incapable of being made at all." Or, as he states it in another place, that "Law is self-created and self-existent, and can neither be made nor abrogated, however it may be, in some degree, incidentally shaped, enlarged and modified, by legislation." To the demonstration of this theorem, Mr. Carter brings in cumulative form the arguments and illustrations which he had advanced many times before.

Whether one agrees with him or not, the book is of great interest as an expression of the deliberate and mature conviction of one of the most thoroughly trained and powerful legal minds which this country has yet produced. A wider knowledge of its views could not fail to have a salutary effect upon the all too prevalent and mischievous notion that most of the evils which exist in the world can be cured by legislation, and that men can be made good and honest by mere act of Parliament.

FLOYD R. MECHEM.

*Thucydides Mythistoricus.* By FRANCIS MACDONALD CORNFORD, Fellow and Lecturer of Trinity College, Cambridge. (London: Edward Arnold. 1907. Pp. xvi, 252.)

THIS book falls into two distinct parts—Thucydides Historicus, and Thucydides Mythicus. The first part attempts to prove the complete inadequacy of Thucydides's account of the origin of the Peloponnesian War, and develops "a very different theory of the real causes of the war". The second part attempts an answer to the question "why Thucydides has told us about this matter . . . so exceedingly little that appears to us relevant". Baldly stated, this sounds iconoclastic, but nothing can be more reverent than the author's treatment of the greatest historian of antiquity, on whose mind, methods and work he has shed much new and welcome light. One may dissent from the main propositions of this stimulating study, and yet be grateful for the richness and fullness of its suggestion. It has the brilliant ingenuity and the tantalizing inconclusiveness to be expected in an ardent pupil and admirer of Professor Verrall.

For, after all, is Thucydides's account of the origin of the Peloponnesian War "remarkably inadequate"? He set out to tell how, not why it originated. In the long retrospect, for the historian's account was undoubtedly written after the close of the long struggle, Sparta's jealousy of Athens is the dominant element of hostility and has been